

## REMARKS/ARGUMENTS

Responsive to the Final Office Action dated May 10, 2006, Applicant appreciates the withdrawal of the previous rejection under 35 U.S.C. § 112. Claims 1-12 remain pending for prosecution with Claims 1, 7, 10, and 12 being independent.

### **I. 35 U.S.C. § 102 Rejection**

Claims 1-12 were finally rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,432,473 to MacEwan. For the following reasons, Applicant respectfully requests reconsideration and withdrawal of this rejection.

MacEwan does not anticipate the present invention because MacEwan fails to disclose each and every element of Applicant's invention as claimed. In particular, MacEwan fails to disclose applying a layer of hot melt adhesive to the terminal perimeter edge of the plug to seal the plug with the cartridge body interior surface. It is asserted in the Final Office Action that MacEwan teaches "applying a layer of hot melt adhesive (57) to the terminal perimeter edge of the plug (*column 6, lines 16-26, discloses that the layer of the thermoplastic material (56) that is applied to the inner surface (42) of the cartridge wall (22), and the layer of the thermoplastic material that is applied to the outer surface of the terminal perimeter edge (32) are melting and fusing together to form and [sic] adhesive layer (57) around the terminal perimeter edge of the plug, and the examiner construes that the melting and fusing of the thermoplastic material is read as applying a layer of hot melt adhesive - also figure 3*) to seal the plug with the cartridge body interior surface and prevent food sauce disposed within the containment region from exiting the region by flowing around the terminal perimeter edge of the plug along with the cartridge body interior surface (*column 6, lines 37-39*)(emphasis in the original)". Applicant respectfully traverses this assertion.

At Column 6, lines 16-26, MacEwan teaches “[t]his seal is preferably achieved between the closure lip 32 and the inner surface 42. As mentioned above, the tubular side wall 22 preferably includes a thin metal foil laminate 52 suitably adhered to the inner surface of an outer laminate 54 of food-grade paperboard. A thick coating of **normally solid thermoplastic material**, preferably polyethylene, is adhered to the inner surface of the metal foil laminate 52 and is designated by the reference character 56. **The annular seal between the closure lip 32 and the metal foil laminate 52 is preferably achieved by mutually fusing the outer surface of the closure lip 32 and the polyethylene film laminate 56 as shown at 57** (emphasis added).” Thus, contrary to the Examiner’s assertion that reference number 57 refers to the thermoplastic material, the reference character 57 refers to the site of mutual fusion between the outer surface of the closure lip and the polyethylene film laminate.

Further, MacEwan does not teach that the layer of thermoplastic material that is applied to the outer surface of the terminal perimeter are melting and fusing together to form an adhesive layer. Rather, MacEwan teaches a paperboard sidewall that includes a metal foil laminate adhered to the inner surface and a thin coating of a normally solid thermoplastic material adhered to the metal foil. A radially outwardly extending closure lip is formed on the first end portion of the plug top closure. Contrary to the assertion in the Office Action, there is no teaching of a thermoplastic material being applied to the closure lip. The annular seal between the closure lip and the metal foil laminate is achieved by fusing the outer surface of the closure lip and the polyethylene film laminate.

Moreover, Applicant respectfully traverses the Examiner’s construction that melting and fusing of thermoplastic material is read as applying a layer of hot melt adhesive. MacEwan teaches that the annular seal between the closure lip and the metal foil laminate is achieved by

fusing the outer surface of the closure lip and the polyethylene film laminate. In this context, Applicant respectfully submits that fusing the closure lip and the polyethylene film laminate together is not the same as the application of a hot melt adhesive. To the contrary, fusing results in a permanent bond whereas hot melt adhesives can be repeatably softened and melted by heat and hardened or set by cooling, allowing the removal or repositioning of parts during assembly.

In response to Applicant's previous traversal on this point, the Office Action states that Applicant has misinterpreted the principle that claims are interpreted in light of the specification. It goes on to state that “[a]lthough these elements ‘repeatably softened,’ ‘hardened or set by cooling,’ ‘removal or repositioning’ are found as examples or embodiment in the specification, they were not claimed explicitly. . . . A reading of the specification provides no evidence to indicate that these limitations must be imported into the claims to give meaning to disputed terms.” Applicant respectfully submits that it has not misinterpreted the principle that claims are interpreted in light of the specification, but has rather been applying the principle that a claim term must be given its ordinary and customary meaning, which is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention.

*Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005)(en banc). Moreover, as held by the Federal Circuit, the person of ordinary skill is deemed to have read the claim term in the context of the entire patent, i.e., not only the claim, but the full specification. Applicant submits that a person having ordinary skill in the art would know that Applicant's “hot melt adhesive” would have these properties and this fact is supported by Applicant's specification. Moreover, one of ordinary skill in the art would also know that MacEwan's melting and fusing of the thermoplastic material to the closure lip cannot be read as applying a layer of hot melt adhesive.

Accordingly, because MacEwan fails to teach all of the elements of Applicant's independent Claims 1, 7, 10 and 12 and the claims depending therefrom, it cannot therefore anticipate the invention as claimed.

## II. 35 U.S.C. § 103 Rejection

Claims 1-12 were also rejected, in the alternative, under 35 U.S.C. § 103(a) as being unpatentable over MacEwan. For the following reasons, Applicant respectfully requests reconsideration and withdrawal of this rejection.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claim combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

MacEwan does not teach or suggest the claimed invention. For the same reasons as discussed above in connection with the § 102 rejection, MacEwan fails to teach or suggest applying a layer of hot melt adhesive to the terminal perimeter edge of the plug to seal the plug with the cartridge body interior surface. The Office Action states that "the examiner maintains that: MacEwen [sic] discloses the step of applying a layer of hot melt adhesive (66) [sic] to the periphery of the dispensing head (26) and the inner surface (42) of the tubular side wall (22)(column 6, lines 57-60 - also figures 1-3). Applicant respectfully traverses this assertion and submits that MacEwan teaches a paperboard sidewall that includes a metal foil laminate adhered

to the inner surface and a thin coating of a normally solid thermoplastic material adhered to the metal foil. A radially outwardly extending closure lip is formed on the first end portion of the plug top closure. Contrary to the assertion in the Office Action, there is no teaching of a thermoplastic material being applied to the closure lip. The annular seal between the closure lip and the metal foil laminate is achieved by fusing the outer surface of the closure lip and the polyethylene film laminate. In this context, Applicant respectfully submits that fusing the closure lip and the polyethylene film laminate together is not the same as the application of a hot melt adhesive. To the contrary, fusing results in a permanent but fragile bond that offers no resilience to the connection. This is to be contrasted to the claimed use of hot melt adhesives which are capable of acting as a shock absorber if the cartridge body is dropped. Further, since the hot melt is more of a fillet connection between the disk and cartridge body, a filled cartridge (container) is much less likely to leak and provides an overall package of enhanced strength and durability. Thus, Applicant respectfully that MacEwan's melting and fusing of the thermoplastic material to the closure lip cannot be read as applying a layer of hot melt adhesive and does not suggest a similarly contrasted package/cartridge.

Moreover, it is asserted in the Office Action that it would have been obvious to one skilled in the art to have modified MacEwan's method by incorporating the application of "the hot melt adhesive layer to the terminal periphery edge of the plug and the cartridge body interior surface just as it (the hot melt adhesive) [is] being applied to dispensing head." Applicant respectfully submits that MacEwan teaches away from the use of hot melt adhesive at the terminal periphery edge of the plug because such use would obviate the need for the paperboard sidewall that includes a metal foil laminate adhered to the inner surface and a thin coating of a normally solid thermoplastic material adhered to the metal foil. Moreover, Applicant

respectfully submits that the thermoplastic material (that is being construed by the Examiner as hot melt adhesive) is not, in fact, applied to the closure as supported by the exact language of Column 6, lines 16-26.

Prima facie obviousness requires that there must be some suggestion or motivation, either in the reference itself or in the knowledge generally available to one of ordinary skill in the art, to modify the reference. No such suggestion or motivation exists in MacEwan to apply a layer of hot melt adhesive to the terminal perimeter edge of the plug to seal the plug with the cartridge body interior surface. Moreover, the prior art reference must teach or suggest all the claim limitations. As discussed above, MacEwan fails to teach or suggest all of the elements of Applicant's independent Claims 1, 7, 10 and 12 and the claims depending therefrom. Unless all the elements are taught by the references, there can be no success in modifying them.

Thus, at the time the present invention was made, MacEwan fails to teach or describe all of the limitations claimed by Applicant in independent Claims 1, 7, 10 and 12 and the claims depending therefrom. Accordingly, Claims 1-12 are nonobvious under § 103(a).

### **III. Conclusion**

Applicant respectfully submits that the present application is now in condition for allowance and such is courteously solicited. If any issue regarding the allowability of any of the pending claims in the present application could be readily resolved, or if other action could be taken to further advance this application such as an Examiner's amendment, or if the Examiner should have any questions regarding the present amendment, it is respectfully requested that the Examiner please telephone Applicant's undersigned attorney in this regard. Should any fees be necessitated by this response, the Commissioner is hereby authorized to deduct such fees from Deposit Account No. 11-0160.

Respectfully submitted,

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